

Testimony of

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Subcommittee of the

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Freedom of Information Reform Act (S. 774)

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Mr. Chairman and Members of the Committee,

I appear here today as one who has been a practicing journalist for more than 45 years, a professor to graduate students of journalism for 25 years, one who has been the unknowing target of secret investigations by the intelligence arms of three federal agencies — the Department of State, the Federal Bureau of Investigation and the Central Intelligence Agency — and finally one who for the past seven years has been in constant search from these authorities of my rights as a private citizen under current Freedom of Information/Privacy statutes as adopted by the Congress.

My experience in all these roles leads me to the firm conclusion that the urgent need is more, not less access to government records by the public at large. There should be more, not less accountability among public servants who collect, evaluate and file information about institutions and individuals in our society. Freedom of Information means the onus should always be upon the government to defend the need for secrecy, not upon the citizen to prove the case for access.

I speak as a grateful user of Freedom of Information in the imperfect state in which it now exists in this country. Without it I could never have learned, at the age of 62, that I had been classified a national security risk for more than half my life. Without it, I could never have discovered the dossiers of hearsay, innuendo and unsubstantiated allegations distorted by government bureaucrats who, without due process of any description, amassed and circulated the files branding me as a disloyal American, a dangerous radical,

a definite national security risk, a subversive "too clever" to be caught holding a membership card in the Communist Party. All without a single scrap of concrete evidence, with no opportunity to defend myself or to know the identity of my anonymous accusers. And to this day the government persists in its refusal to permit me to see large portions of the expurgated records it has grudgingly made available after endless delays.

Take the Central Intelligence Agency, which is beseeching this Congress to exempt its operational intelligence files completely from Freedom of Information petitions, and to impose all the costs of any Freedom of Information search of the rest of its files on the petitioner. Responding to my requests under existing law, it took the CIA three years, two months and six days to deliver portions of 14 documents it had been holding in its files under my name for more than 20 years. A fifteenth document, from its operational intelligence files, was "denied in entirety". A sixteenth document — a letter from John Edgar Hoover, Director of the FBI, to Colonel Sheffield Edwards, Director of Security for the CIA — was completely blacked out except for a single sentence: "There are enclosed two copies of a memorandum containing information regarding Penn Townsend Kimball." That document, dated June 4, 1959, will be 25 years old next month, hardly on the cutting edge of this nation's security in the year 1984.

What was the CIA doing in my private life 25 years ago? The CIA had no legal authority then to conduct domestic surveillance; in fact, it was specifically prohibited from such activity. The CIA documents released to me have been so emasculated that there is no way I can find out why on earth they would be

investigating me. (I was working for Governor W. Averell Harriman of New York when the investigation began; I had just been appointed a professor at Columbia University when that investigation was concluded in 1960.) I have reason to believe that one part of the documents censored from my view deals with the methods by which the CIA gathered its information about me. Could these methods have also been illegal?

Such questions could be cleared up in a moment, of course, by the simple process of full disclosure by the CIA. But that agency, which is seeking alleged "reforms" in the bill before this Committee, consistently and systematically is avoiding its responsibilities under current FOI regulations in my opinion. That is also the opinion of my attorneys who have prepared a complaint in my behalf for filing in Federal District Court.

When I finally managed to obtain a partial release of heavily censored copies of my CIA file, I discovered to my utter amazement that even my late wife had been implicated by the CIA in the course of its investigation of me. Since she can no longer defend herself, I have been seeking since October, 1982, for the release of my late wife's CIA file — a request that has produced no tangible response after more than a year and one-half. All told I have been petitioning the CIA for almost exactly five years. I am 68 years old now, going on 69. I have visions of a CIA official in its Freedom of Information section holding my repeated petitions in one hand and an actuarial table in the other as the years go on. It strikes me as an unfair race in which a stonewalling bureaucracy is attempting to outlast the victim. But I have every intention, in fact I can feel the adrenalin flowing, of staying the course.

It does occur to me, however, that my experience suggests a real and practical reform of the Freedom of Information Act which this Committee might want to consider: namely, that anyone seeking personal information from government files who reaches the age of 65 should automatically be placed at the head of the line waiting for their Freedom of Information and Privacy requests to be processed by a government agency. A priority for senior citizens in getting a look at their own government files would give them a decent crack at exercising their supposed legal right to amend these records where they contain error and grave misrepresentation.

You may wonder why the CIA has taken so long to tell me so little about what is in my own file. The inferior quality of the information gathered by the lead agency in the gathering of intelligence vital to our national security might astound you as it astounded me. In the year 1941, for example, I shared an apartment in New York City with a newspaperman colleague of mine whose name was Amos So-and-So (I omit his last name to protect his privacy from being associated with a dangerous character like me.) When I received my CIA file, it reported that in 1941 I was sharing an apartment with "a Miss So-and-So." Forty years ago such living arrangements were more shocking to security checkers than they might be today — if true. This precious piece of bum dope is accompanied in my security file by a report from an agent of the Federal Bureau of Investigation who found someone in my home town who reported that "Kimball had a very permissive upbringing and was allowed to drink cocktails at an early age." A special investigator from the Department of State painstakingly recorded that "Kimball was seen drinking beer in the company of

Communists, although it was not clear whether he was attracted by their beer or their politics." In the hands of government summarizers, who accentuate the negative and throw out everything coming from anyone identified as a friend of the subject under investigation, this kind of junk is used to build a picture in the file of a suspect human being who is totally unrecognizable to the real-life person who manages to obtain his government file through Freedom of Information.

I don't wonder that the keepers of such files come to this Committee to complain that they are overburdened with citizen requests for information, hopelessly backlogged by paper work and would just as soon nobody was ever permitted a peek at some of the stuff they have gathered through the years with tremendous expenditure of time and taxpayers' money. The cream of the jest is the bill now before your Committee which would charge the victims the expense of finding out the extent of the damage to their character and reputation.

If I am to assume that the government has been making a good-faith effort to search its files in my behalf, then I would have to conclude that the administration of the Freedom of Information/Privacy Acts within the Executive Branch is seriously underfunded. But the way to eliminate the delays, the backlogs, the practical emasculation of the intent of these statutes to open up the channels of information would be to appropriate the funds necessary to carry them out — certainly not to saddle the petitioner with fees which do nothing to expedite the process.

Many suggested "reforms" of the Freedom of Information Act — such as those suggested in S. 774 and similar legislation before the Congress — seem to focus on supposed burdens imposed by current regulations and guidelines on the administrative capacities of the Executive Branch. These arguments seem to assume that the Government is in possession of a vast storehouse of universally valuable and sensitive information which irresponsible citizens are likely to compromise. My own experience with government security branches suggests that the compelling area for reform is in the manner in which government agencies amass their security files rather than making it more difficult for the public to discover the results of such activity. There is little or no due process in the system under which individual citizens are judged, as I was, to be disloyal to their country and unfit for positions of public trust.

The accused is not informed of the charges against him. He is not accorded the opportunity to confront his accusers or even to know who they are so that he might comment on their motives or creditability. He is not permitted to speak or offer evidence in his own defense. Murderers, rapists and bank robbers have more civil rights than an individual classified as a national security risk.

When government investigators set out to check the loyalty of a person under surveillance, one would expect the process would meet at least the minimum standard of competent journalism. One would expect an FBI agent, for example, to gather his information from a wide variety of sources, assembling the positive and negative assessments in a fair-minded manner, checking and cross-checking the facts as presented, going to the records whenever possible which

might illuminate the whole picture, looking for concrete evidence to substantiate allegations regarding personal beliefs and behavior, searching out sources who knew the individual under scrutiny best and finding examples from the individual's own writings and actions to buttress any evaluation of his character and reputation.

That is not what the FBI did when it investigated me. The agents were instructed to concentrate on "known anti-Communists" as sources and to focus their attention on "communistic sympathies or any other subversive information that may be found." The agents rewrote much of the material they gathered in their own words. Then they passed it on to government evaluators who selected those portions they wished to emphasize and discarded information which did not fit their final conclusion. The evaluators, of course, have everything to lose and nothing to gain by giving a person under surveillance the benefit of the doubt. The summaries in my own government files are case histories in the familiar bureaucratic exercise of covering one's rear end against every possibility of personal blame.

We are entering an era when, I fear, there is going to be more and more questioning of the patriotism of those who disagree with the policies of the government of the day, as those who acquired files during the Vietnam war learned during that time. That is one more reason why it is imperative to keep open the window of Freedom of Information which so many seem eager to close. And it is another argument for incorporating guidelines of due process into the system by which government attempts to pass on the beliefs and values of individuals who may differ with the conventional wisdom expressed by those in

positions of power.

Representative democracy in a complicated and organized society means that very important decisions are constantly taken by small groups of people out of sight of the public. For consent of the governed to be meaningful it must be informed consent. Information is power. People are entitled to a maximum degree of information about how their government is operating. That is the most effective way to make government more responsible and accountable to those it is supposed to serve.

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